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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/536,885	05/31/2005	Ebrahim Firoozabady	63-000600US	6613
22798 7590 10/20/2009 QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C. P O BOX 458 ALAMEDA, CA 94501				
EXAMINER				
KALLIS, RUSSELL				
ART UNIT		PAPER NUMBER		
1638				
MAIL DATE		DELIVERY MODE		
10/20/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/536,885

Applicant(s)

FIROOZABADY, EBRAHIM

Examiner

RUSSELL KALLIS

Art Unit

1638

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 5, 10, 18 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 10, 18 and 21-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/17/2009 has been entered.

Claims 1, 5, 10, 18, and 21-23 are pending and examined.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 1, 10, 18, and 21-22 remain rejected under 35 U.S.C. 102(a) as being anticipated by Mezzetti B. *et al.* BMC Biotechnology; Vol. 2, no: 18 published 9/27/2002. This rejection is maintained for the reasons of record set forth in the Official action mailed 4/30/2008 and 12/04/2008. Applicant's arguments filed 4/13/2009 and 8/17/2009 have been considered but are not deemed persuasive.

Applicant asserts that the teachings of Mezzetti do not anticipate the limitations of claim 1 because they are directed to transformation of callus tissue rather than transformation of cells that did not go through a callus intermediate stage (response page 2 remarks of 8/17/2009); and that the reference teaches away from the instantly claimed method because it relies upon transforming a callus intermediate (page 5 of response 4/13/2009).

The reference clearly teaches that the method employed is an organogenic one (i.e. a method that skips the callus phase and regenerates organs directly from meristematic tissue) as stated in previous office actions. Moreover, the method taught by Mezzetti does not rely upon callus tissue and it is clearly stated in the results section that adventitious shoots are the desired tissue for transformation. Further, the reference distinguishes itself from the callus methods on page 2 in the first column paragraphs 2 and 3. Furthermore, Applicants specification discusses using the same cultivated meristematic tissues as those used in Mezzetti (see Examples 1 and 2 on page 40 paragraph 0138 for example). In addition, the color drawings do not overcome the rejection for reasons stated supra.

Claim Rejections - 35 USC § 103

Claims 1, 5, 10, 18, and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mezzetti in view of U.S. 6,653,530 filed February 13, 1998. This rejection is maintained for the reasons of record set forth in the Official action mailed 4/30/2008. Applicant's arguments filed 9/05/2008 have been considered but are not deemed persuasive.

Applicant asserts that the Mezzetti reference is deficient in the lack of teaching of a direct organogenic transformation method and relies upon a callus intermediate and that the cell transformation methods of the 6,653,530 Patent are deficient as well (page 5 of response 4/13/2009).

The Mezzetti arguments are presented supra.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RUSSELL KALLIS whose telephone number is (571)272-0798. The examiner can normally be reached on M-F 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Russell Kallis/
Primary Examiner, Art Unit 1638
October 15, 2009